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HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re First Security Capital, L.L.C.

Serial No. 75/527,295

William J. Mason of Rhodes & Mason, PLLC for First Security Capital, L.L.C.

Robert C. Clark, Jr., Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Hairston, Chapman and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

First Security Capital, L.L.C. has filed an application to register the mark FSC and design, as shown below, for "financial services, namely, making nontaxable loans secured by stock."[1]

[1] Serial No. 75/527,295, filed July 29. 1998, claiming first use dates of July 1997.

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the mark FSC and design, as shown below, which is registered for "financial services, namely, financial planning and management, security brokerage services, mutual funds services, insurance services, and employee benefit plans relating to pensions, profit sharing and retirement."[2]

The refusal has been appealed and applicant and the Examining Attorney have filed briefs. An oral hearing was originally requested but later waived.

We make our determination of likelihood of confusion on the basis of those of the *du Pont* factors[3] which are relevant under the circumstances at hand and for which evidence is of record. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000). Two key considerations in any likelihood of confusion analysis are

[2] Registration No. 1,226,167, issued February 1, 1983, Section 8 & 15 affidavits, accepted and acknowledged, respectively.
[3] See In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods or services with which the marks are being used. See In re Azteca Restaurant Enterprises, Inc., 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Considering first the marks involved here, we are guided by the well-established principle that, although the marks must be considered in their entireties, there is nothing improper, under certain circumstances, in giving more or less weight to a particular portion of a mark. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In the present marks, the same three letters FSC in the same sequence dominate the marks. There are no other letters or words which might serve to distinguish the letter series; they are identical in sound and neither has any particular connotation in relation to the services.

Applicant insists that the marks must not be viewed simply as letter series, but rather the marks as a whole and the differences in the design features must be taken into consideration. Applicant contends that although the letters are the same, the design features of the two marks are significantly distinct, resulting in entirely different appearances.

Although it is true that these design differences exist, we find it appropriate to give greater weight to the literal portions of the marks, because it is the literal portions which purchasers will use to refer to the services and thus it is the literal portions, rather than any design features, which will make a greater and longer lasting impression on them. See Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A., 32 USPQ2d 1192 (TTAB 1994). The differences upon which applicant is relying, such as differences in the display of the letters as light or dark, the fonts, or the background shapes, are not distinctive design features which purchasers would remember over a period of time, much less use in reference to the services. We find no parallel to the case cited by applicant, First Savings Bank F.S.B. v First Bank System Inc., 101 F.3d 645, 40 USPQ2d 1865 (10th Cir 1996). In that infringement case, the common words FIRST BANK were only a part of the literal portions of the marks and were shown to be weak terms frequently used in the field; here the same letter sequence is the whole of the literal portions of each of the respective marks and is, for purposes of registration, totally arbitrary in the financial field. As a result, here the design features play a much less significant role in determining the similarity of the

marks. We find the overall commercial impressions created by the present marks to be, at the very least, highly similar.

Turning to the respective services, we note that it is not necessary that the services be similar or even competitive to support a holding of likelihood of confusion. It is sufficient if the respective services are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same person under circumstances that could, because of the similarity of the marks being used thereon, give rise to the mistaken belief that they emanate from the same source. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993) and the case cited therein.

Applicant argues that its services are directed to making loans secured by stock, whereas the services of the registrant are directed to financial advice and assistance, not providing loans. The question, however, is not whether the services are the same, but rather whether the services are related in some manner. The Examining Attorney has made of record copies of three third-party registrations showing that the same entities have registered a single mark for use in connection with both financial planning services and loan financing, as well as other of the

financial services covered by the cited registration. While not a large showing, we find this evidence adequate to demonstrate that the financial services offered by applicant and registrant are services which might well be assumed to emanate from a single source. See In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988). Thus, we find it highly likely that when purchasers encounter the financial loan services being provided by applicant, because of the high degree of similarity of the FSC marks being used in connection with applicant's services and those of registrant, they will be confused as to the source thereof.

Decision: The refusal to register under Section 2(d) is affirmed.